

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re Enron Corporation
Securities, Derivative &
"ERISA" Litigation

MDL-1446

MARK NEWBY, ET AL.,

Plaintiffs,

v.

ENRON CORPORATION, ET AL.,

Defendants.

JEFF ADER, MARK BERNSTEIN, AND
BRIAN BURNETT,

Petitioners,

v.

J.P. MORGAN CHASE & CO. et al.,

Respondents.

CIVIL ACTION NO. H-01-3624
CONSOLIDATED CASES

CIVIL ACTION NO. H-02-3193

LEHMAN BROTHERS HOLDINGS INC.'S MOTION TO CONSOLIDATE

Lehman Brothers Holdings Inc. ("Lehman") files this Motion to Consolidate pursuant to Local Rule 7.6 and the Court's December 12, 2001 Order of Consolidation.

On or about July 25, 2002, Jeff Ader, Mark Bernstein and Brian Burnett, (collectively "Petitioners"), commenced an Enron-related action against LBI and others by filing a Verified Petition for Pre-Suit Discovery ("Petition") in the 80th Judicial District Court of Harris County, Texas, Cause No. 2002-37428, styled *Mark Ader, et al. v. J.P. Morgan Chase & Co., et al.* (Exhibit 1) Petitioners, who appear to be putative class members in the consolidated Enron securities litigation, allege, among other things, that they "suffered significant financial loss as the result of Enron's financial disaster" (Petition at 4.)¹ Petitioners seek discovery under

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Rule 202.2 of the Texas Rules of Civil Procedure against Lehman and others "to determine what role Respondents played in the structuring, financing, auditing, and execution of the complex [special purpose entity] business transactions so that Petitioners may ascertain whether there exist facts sufficient to warrant litigation against Respondents." (Petition at 5.)

Lehman timely removed Petitioners' action to the Southern District of Texas. (Exhibit 2) The case was initially assigned to Judge Hittner, who recused himself and reassigned the case to Judge Rainey. (Exhibit 3) Petitioners' action should be consolidated with the other Enron securities litigation pending in this Court.

The December 12, 2001 Order of Consolidation provides:

Pursuant to Rule 42 of the Federal Rules of Civil Procedure and Local Rule 7.6, and to secure the interests of justice, the actions involving or related to the financial difficulties of Enron Corporation, pending in the Southern District of Texas, are consolidated in the court in which the oldest related case was filed in this district, which is Civil Action No. H-01-3624, *Newby v. Enron Corporation, et al.* Other actions later filed in this District relating to the same core of operative facts and issues will also be consolidated in this Court.

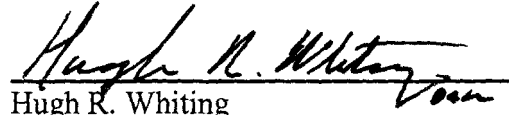
See December 12, 2001 Order. (Docket 17). Petitioners' action is an action "involving or related to the financial difficulties of Enron Corporation, pending in the Southern District of Texas." Petitioners' action is also an action "later filed in this District relating to the same core of operative facts and issues" as *Newby*.

WHEREFORE, Lehman respectfully requests this action be consolidated with Civil

Action No. H-01-3624, *Newby v. Enron Corporation, et al.*, and such other and further relief to which Lehman is entitled.

Dated: September 4, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Hugh R. Whiting", is written over a horizontal line.

Hugh R. Whiting

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Attorneys for Defendant

Lehman Brothers Holdings Inc.

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Lehman Brothers Holdings Inc. conferred with counsel for petitioners regarding the foregoing motion to consolidate, and that petitioners are opposed to the motion.



David M. Bays

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document has been served via hand delivery and/or U.S. mail pursuant to the Federal Rules of Civil Procedure upon the following this 4th day of September 2002:

Via Hand Delivery

Honorable John D. Rainey
United States District Judge
Room 8613, Courtroom 8B
515 Rusk
Houston, Texas 77002
(Courtesy Copy)

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The Service List

May be Viewed in

the Office of the Clerk

The Exhibit(s) May
Be Viewed in the
Office of the Clerk